

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Fort Bridger, WY and Woodruff, UT))

MM Docket No. 00-161
RM-9929

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TO: John A. Karousos, Chief
Allocations Branch, Policy and Rules Division

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**OPPOSITION TO MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMMENTS
AND MOTION TO STRIKE**

M. Kent Frandsen ("Frandsen"), permittee of Station KNYN(FM), Fort Bridger, Wyoming, by his attorneys, hereby submits an opposition to the Motion for Leave to File Supplemental Comments filed by KGNT, Inc. ("KGNT") (the "Motion") and a Motion to Strike KGNT's Supplemental Comments. First and foremost, KGNT's Supplemental Comments should be dismissed because they were filed over six months after the deadline passed for filing reply comments in this proceeding. The Commission cannot be expected to accept comments filed more than half a year after the close of its allotted period for adding to the rulemaking's record. KGNT's Supplemental Comments must be stricken from this proceeding.

If the Commission does choose to accept KGNT's late-filed "supplemental" comments, it will find KGNT's arguments to be unpersuasive and repetitive. For example, KGNT criticizes Frandsen for basing some of the statements he made in his Comments and Reply Comments on

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Census data that was, as KGNT admits in its own Motion,¹ not available to him at the time these filings were supposed to be made in this proceeding. Even in light of this new Census data, however, KGNT's opposition to the proposal set forth in the Commission's Notice of Proposed Rulemaking ("*NPRM*") to amend the FM Table of Allotments to reallocate Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah should be rejected. The proposed change in the Table of Allotments is in the public interest and, therefore, should be approved.

Discussion

I. KGNT's Supplemental Comments are Late-Filed and Should Be Stricken.

KGNT's Supplemental Comments were filed more than six months after the reply comment deadline had passed in this proceeding. Because the Commission's rules do not permit late-filed comments and the comments contain census data that was not available at the close of the comment period in this rulemaking proceeding, KGNT's Supplemental Comments should be stricken.

The *NPRM*, released on September 1, 2000, specified an October 23, 2000 deadline for filing comments and a November 7, 2000 deadline for filing reply comments. On October 23, 2000, KGNT and Frandsen timely-filed comments in this proceeding. On November 7, 2000, Frandsen filed reply comments responding to KGNT's comments, and KGNT filed nothing. Then on May 15, 2001, more than six months after the November 7, 2000 deadline for filing reply comments, KGNT filed its Supplemental Comments.

The Commission's rules clearly state that additional or "supplemental" comments may not be filed. Section 1.415 of the Commission's rules states that, apart from the comments and

¹ See Motion at 1 ("The latest data was not available during the comment phase of this proceeding").

reply comments permitted in the notice of proposed rulemaking, “[n]o additional comments may be filed unless specifically requested or authorized by the Commission.” 47 CFR § 1.415(d) (2000). Since the Commission did not specifically request and should not authorize the filing of KGNT’s Supplemental Comments, they should be stricken from this proceeding.

In addition, even though the Commission has the ability, in certain instances, to accept late-filed comments, it should not do so in this case because KGNT’s Supplemental Comments were filed over six months after the reply comment deadline, or the deadline for adding facts to the rulemaking’s “record.” KGNT relies on *Daytona Broadcasting Co., Inc.*, 97 FCC 2d 212 (1984) (“*Daytona*”) for its argument that its Motion should be granted because the 2000 U.S. Census data was “not available during the comment phase of this proceeding.” See KGNT’s Motion at 1. However, in *Daytona*, which involved a hearing to resolve a mutually exclusive situation between three television station applicants, the most current census data was released “prior to the date for the official close of the evidentiary record” and, therefore, the Commission felt that the late-filed census data was admissible. In this case, the rulemaking “record” closed on November 7, 2000 and the census data did not become available until the end of the year 2000. In this situation, the Commission should not accept the grossly late-filed comments containing updated Census data. Consequently, the Commission should strike KGNT’s late-filed Supplemental Comments and should deny KGNT’s Motion.

Moreover, as demonstrated below, even if KGNT’s Supplemental Comments are accepted by the Commission, they repeat arguments that Frandsen has already refuted in the Reply Comments he filed in this proceeding and, therefore, should be dismissed.

II. Woodruff, Unlike Fort Bridger, Is A “Community” For Allotment Purposes.

In its Supplemental Comments, KGNT again makes the argument Fort Bridger, Wyoming is the preferred community under a Section 307(b) analysis. However, an analysis of both cities’ “community” elements demonstrates that Woodruff, Utah is the preferred community. As Frandsen has already stated in the Comments and Reply Comments he filed in this proceeding, Woodruff has many elements that define it as a “community,” including a local government made up of a mayor and city counsel, a United States Post Office and zip code, a fire department, several local businesses, and a sizeable Ward congregation of the Church of Jesus Christ of Latter Day Saints which has close to 500 members. In addition, as previously stated, Woodruff is a gathering place for the surrounding population of Rich County on occasions such as the Fourth of July, when it hosts a parade and rodeo, and, recently, when Woodruff participated as a host city for an internationally-known cross country bicycle race, the Race Across America. All of these elements combine to create the “community” of Woodruff, which would greatly benefit from the introduction of a first local service.

In contrast, KGNT has failed to show that Fort Bridger has any elements which would help define it as a “community.” For example, KGNT has not demonstrated that Fort Bridger has a local government, a U.S. Post Office and zip code, a fire department, a hospital or even a single business establishment. The only evidence KGNT has presented to advance its argument that Fort Bridger is a “community” is that it has historical significance as a community that once was. *See* Supplemental Comments at 2 and Attachment 1. With all due deference to the importance of Fort Bridger to the Oregon Trail in the 19th Century, KGNT does not show any evidence that Fort Bridger is a thriving community – or any kind of community at all – in the 21st Century. Consequently, the preferred allotment for Station KNYN is Woodruff, not Fort

Bridger, which has fewer elements that would define it as a “community” for allotment purposes than Woodruff.

III. The Proposed Reallotment Will Not Result in a Loss of Service.

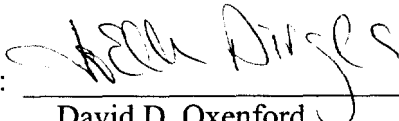
In its Supplemental Comments, at page 4, footnote #1, KGNT again argues that the Frandsen proposal will result in a loss of service to the underserved area of Fort Bridger. This is simply not true. Frandsen has not proposed any change in coordinates for the proposed station, and, as KGNT recognized in its own Comments, because the transmitter site will remain the same regardless of the community of license, the proposed reallotment will not deprive either Fort Bridger or Woodruff of service. *See* KGNT’s Comments at 2-3. Unless and until a change in site is proposed, KGNT’s arguments are without foundation and should be rejected.

Conclusion

For the foregoing reasons, the Commission should deny KGNT's Motion for Leave to File Supplemental Comments and should strike KGNT's Supplemental Comments from this proceeding. Frandsen respectfully requests that his proposed change to the FM Table of Allotments be adopted.

Respectfully submitted,

M. KENT FRANDSEN

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May 31, 2001

CERTIFICATE OF SERVICE

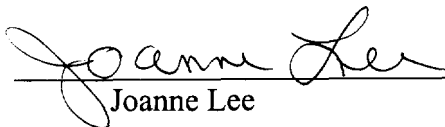
I, Joanne Lee, a secretary in the law firm of Shaw Pittman, hereby certify that I have, on this 31st day of May, 2001, caused a copy of the foregoing **"Opposition to Motion for Leave to File Supplemental Comments and Motion to Strike"** to be served by first class U.S. mail, postage prepaid, on the following:

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